



[4310-W7-P]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Implementing Procedures; Addition to Categorical Exclusions for Bureau of Indian Affairs

AGENCY: Department of the Interior.

ACTION: Notice of Final National Environmental Policy Act Implementing Procedures.

SUMMARY: This notice announces the addition of a new categorical exclusion under the National Environmental Policy Act (NEPA) to be included in the Departmental Manual 516 DM 10. The proposed categorical exclusion pertains to the leasing and funding for single-family homesites on Indian land, including associated improvements and easements, which encompass five acres or less of contiguous land.

EFFECTIVE DATE: The categorical exclusion is effective [INSERT DATE of PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To obtain a copy of the new categorical exclusion contact Marvin Keller, NEPA Coordinator – Indian Affairs, 12220 Sunrise Valley Drive, Reston, VA 20191, email: Marv.Keller@bia.gov.

FOR FURTHER INFORMATION CONTACT: Marvin Keller, NEPA Coordinator – Indian Affairs, (703) 390-6470.

SUPPLEMENTARY INFORMATION:

Background

The need for adequate housing is critical on most Indian reservations. Several hundred actions associated with new home construction are processed each year and this is expected to continue at the same level. The Bureau of Indian Affairs (BIA) has typically conducted NEPA reviews of actions associated with single-family homes by preparing environmental assessments which resulted in Findings of No Significant Impact. The addition of a categorical exclusion to cover the actions associated with new home construction will allow for a more efficient NEPA review.

Because this categorical exclusion has important implications for actions occurring daily on Indian lands, the BIA initiated consultation and requested comments from all federally recognized tribes. This consultation period began on March 7, 2012, and concluded on May 14, 2012. Public comments were also solicited through a notice placed in the Federal Register on May 3, 2012 [77 FR 26314]. The proposed language for the categorical exclusion as set out in the notice was as follows: “Approval of leases, easements or funds for single-family homesites and associated improvements, including but not limited to homes, outbuildings, access roads, and utility lines, which encompass five (5) acres or less of contiguous land, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable federal and tribal laws.”

Comments on the Proposal

The BIA received responses from 14 tribes and one tribal organization. No public responses were received. The responses were in the form of letters and e-mail messages. All responses supported the proposed categorical exclusion; a few suggested minor changes in the language of the categorical exclusion.

Comment: One respondent expressed a concern about neighboring tribes or tribal members constructing homes within their reservation without complying with the tribe’s laws.

The respondent suggested that the categorical exclusion should not be available for non-members or outside tribes to construct homes on another tribe's lands.

Response: The categorical exclusion is intended to be applicable to all tribes and tribal members who propose to construct single-family homes on tribal land or individually-owned Indian land. However, the proposed text of the categorical exclusion includes specific language that references "compliance with federal and tribal laws;" therefore, this categorical exclusion could not be used for any home construction that does not comply with tribal law. The BIA does not propose any additional changes to the language of the categorical exclusion in response to this comment.

Comment: One respondent expressed concern that because of a decrease in funds for the BIA Housing Improvement Program (HIP) the categorical exclusion would not be effective.

Response: The HIP funding levels are outside the scope of this proposal. However, the categorical exclusion is intended to address all BIA actions associated with constructing single-family homes and includes actions not associated with HIP funding.

Comment: A respondent suggested that the categorical exclusion should include Housing and Urban Development (HUD) approved housing activities.

Response: The BIA categorical exclusion can only apply to BIA actions and cannot apply to another agency such as HUD. The proposed BIA categorical exclusion is intended to be consistent with HUD's existing categorical exclusions, so that the level of environmental review will be similar.

Comment: A respondent suggested that since the categorical exclusion is intended to include new construction this term should be added to the text.

Response: The BIA agrees, and text of the categorical exclusion has been changed to clearly indicate that it includes new construction as intended.

Comment: A respondent noted that the BIA Federal Register notice indicates a single-family homesite may include one to four dwelling units, but the number of dwelling units is not referenced in the text of the categorical exclusion. It was suggested that the number of dwelling units should be referenced, and that, because the key factors limiting the use of the categorical exclusion should be the area of land affected (five acres) and the absence of any extraordinary circumstances, it should not matter whether the limit of four dwelling units are in a single building, two duplexes or four detached units.

Response: The BIA agrees the categorical exclusion should be clearly defined as including one to four dwelling units as intended. The BIA also believes that the categorical exclusion should be flexible enough to include a range of housing options. We therefore added text to the categorical exclusion to clarify that home construction may include up to four dwelling units, whether in a single building or up to four separate buildings. This clarification will also ensure the categorical exclusion is consistent with HUD's existing categorical exclusion [24 CFR 58.35(a)(4)(i)].

Comment: One respondent asked for clarification as to who would have approval authority for the categorical exclusion: the agency superintendent or a compacted self-governance tribe.

Response: Because the Federal government is responsible for complying with NEPA, the approval authority for the categorical exclusion is with the BIA responsible official. Tribes can prepare the supporting NEPA documentation, but the approval must remain with the BIA.

Conclusion

The Department of the Interior and the BIA find that the action defined in the categorical exclusion presented at the end of this notice does not individually or cumulatively have a significant effect on the human environment. This finding is based on the analysis of similar

categorical exclusions used by other Federal departments and agencies; the professional judgment of BIA environmental personnel who had conducted environmental reviews of similar actions, which resulted in Findings of No Significant Impact; and the post-construction monitoring of homesites by environmental personnel that verified no unforeseen effects had occurred.

Categorical Exclusion

The Department of the Interior will add the following categorical exclusion to the Departmental Manual at 516 DM 10.5:

Approvals of leases, easements or funds for single family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements do not adversely affect any tribal cultural resources or historic properties and are in compliance with applicable Federal and tribal laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.

Dated: August 3, 2012

Willie R. Taylor
Director, Office of Environmental Policy and Compliance

[FR Doc. 2012-19648 Filed 08/09/2012 at 8:45 am; Publication Date: 08/10/2012]